UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC., Petitioner,

v.

KOSS CORPORATION, Patent Owner.

IPR2021-00686 Patent 10,491,982 B2

Before DAVID C. McKONE, GREGG I. ANDERSON, and NORMAN H. BEAMER, *Administrative Patent Judges*.

ANDERSON, Administrative Patent Judge.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

### I. INTRODUCTION

Apple, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 6–13 of U.S. Patent No. 10,491,982 (Ex. 1001, "the '982 patent"). Paper 2 ("Pet."). Koss Corporation ("Patent Owner") filed a Preliminary Response. Paper 9 ("Prelim. Resp.").

This is the second *inter partes* review between these same parties challenging claims of the '982 patent. In IPR2021-00381 ("'381 IPR") we instituted trial on claims 1–5 and 14–20. '381 IPR, Paper 15. Petitioner filed a "Notice Ranking Petitions and Explaining Material Differences Between Petitions Against U.S. Patent No. 10,206,025." Paper 3, ("Ranking Notice").

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2016); 37 C.F.R. § 42.4(a) (2020). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons explained below, we decline to institute an *inter partes* review of the '982 patent pursuant this Petition.

### II. BACKGROUND

### A. Real Parties in Interest

Petitioner states it is the real party-in-interest. Pet. 85. Patent Owner states it is the real party in interest. Paper 4 ("Mandatory Notice by Patent Owner"), 1; see also Paper 6 (Updates to Mandatory Notice).

### B. Related Matters

Both parties list the related lawsuit alleging infringement of the '982 patent, *Koss Corporation v. Apple Inc.*, Case No. 6:20-cv-00665 (W.D. Tex.) ("District Court" or "District Court Lawsuit"). Pet. 86. Patent Owner lists the District Court Lawsuit and other lawsuits involving the '982 patent, United States applications to which the '982 patent claims priority, and pending *inter partes* reviews as Related Matters. Prelim. Resp. 2, 6.

#### 1. Other Lawsuits

Patent Owner identifies five other lawsuits involving the '982 patent: Koss Corporation v. PEAG LLC d/b/a JLab Audio, Case No. 6:20-cv-00662 (W.D. Tex.); Koss Corporation v. Skullcandy, Inc., Case No. 6:20-cv-00664 (W.D. Tex); Apple Inc. v. Koss Corporation, Case No. 4:20-cv-05504 (N.D. Cal.); Koss Corporation v. Apple Inc., Case No. 6-20-cv-00665 (W.D. Tex.); and Koss Corporation v. Skullcandy, Inc., Case No. 2:21-cv-00203 (D. Utah). Paper 6, 1.

# 2. United States Applications

Patent Owner states the '982 patent claims priority to PCT application No. PCT/US2009/039754, filed April 7, 2009 (the "PCT Application") and provisional application Serial No. 61/123,265 filed April 8, 2008 (the "Provisional Application"). Paper 4, 1.

<sup>&</sup>lt;sup>1</sup> We understand this case was transferred to the District of Utah. *See Bose Corporation v. Koss Corporation*, IPR2021-00297, Paper 16, at 11 (PTAB June 3, 2021).

### 3. Inter Partes Review Proceedings

Patent Owner lists the following *inter partes* review proceedings<sup>2</sup> challenging patents that claim priority to the PCT Application and the Provisional Application:

Bose Corporation v. Koss Corporation, IPR2021-00297, filed December 7, 2020, challenging US Patent 10,368,155 B2;

Apple Inc. v. Koss Corporation, IPR2021-00305, filed December 15, 2020, challenging US Patent 10,506,325 B1;

Apple Inc. v. Koss Corporation, IPR2021-00546, filed February 22, 2021, challenging US Patent 10,206,025 B2;

Apple Inc. v. Koss Corporation, IPR2021-00592, filed March 2,

2021, challenging US Patent 10,469,934 B2;

Apple Inc. v. Koss Corporation, IPR2021-00612, filed March 3,

2021, challenging U.S. Patent 10,206,025;

Apple Inc. v. Koss Corporation, IPR2021-00626, filed March 17,

2021, challenging US Patent 10,206,025 B2;

Bose Corporation v. Koss Corporation, IPR2021-00680, filed March 17, 2021, challenging US Patent 10,469,934 B2;

Apple Inc. v. Koss Corporation, IPR2021-00679, filed March 22,

2021, challenging US Patent 10,506,325 B1; and

Apple Inc. v. Koss Corporation, IPR2021-00693, filed March 23,

2021, challenging US Patent 10,469,934 B2.

Paper 4. 1–2.

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<sup>&</sup>lt;sup>2</sup> We separately note the following pending between these same partes: *Apple Inc. v. Koss Corporation*, IPR2021-00255, filed November 25, 2020; and *Apple Inc. v. Koss Corporation*, IPR2021-00600, filed March 7, 2021, both challenging US Patent 10,298,451 B1.

### C. The '982 Patent

The application for the '982 patent's earliest priority dates are April 7, 2009, to the PCT Application and April 8, 2008, to the Provisional Application. Ex. 1001, codes (60), (63).

### 1. Background Technology

The '982 patent explains that wired headphones interconnecting headphones and a data storage unit are and "cumbersome." Ex. 1001, 1:56–59. "Recently, cordless headphones that connect wirelessly via IEEE 802.11, e.g., via Bluetooth connection, to a laptop or personal computer but "such headphones are also quite large and not in-ear type phones." *Id.* at 1:66–2:4; *see also* Ex. 1003 ¶ 11 (describing Bluetooth as a wireless communication employing IEEE 802.11 (WiFi) and IEEE 802.15).

### 2. The '982 Patent's Wireless Earphones

The '982 patent describes and claims "a wireless earphone that receives streaming audio data via ad hoc wireless networks and infrastructure wireless networks, and that transitions seamlessly between wireless networks." Ex. 1001, 2:64–66. The '982 patent defines "ad hoc wireless network" as "a network where two . . . wireless-capable devices, such as the earphone and a data source, communicate directly and wirelessly, without using an access point." *Id.* at 3:8–14. Two discrete wireless earphones are described, each having a body and an "ear canal portion for insertion into the canal of the user of the earphone." *Id.* at 3:25–27, 3:54–56.

Figure 2A of the '982 patent is reproduced below.

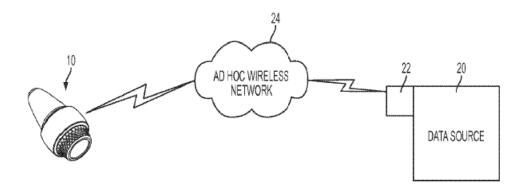


FIG. 2A

Figure 2A illustrates one of the communication modes for the wireless earphone.

Ex. 1001, 2:36–38. Figure 2A illustrates a data source 20 in communication with earphone 10 over ad hoc wireless network 24. *Id.* at 4:33–37. The earphone has a transceiver circuit to communicate wirelessly with a data source. *Id.* at 4:35–37. The data source may be a digital audio player (DAP). *Id.* at 4:39–40. The DAP transmits audio wirelessly to earphone(s) via an ad hoc network if the DAP and earphone(s) are "in range" of that network. *Id.* at 4:63–65. "When in range, the data source 20 may communicate with the earphone 10 via the ad hoc wireless network 24 using any suitable wireless communication protocol, including Wi-Fi (e.g., IEEE 802.1la/b/g/n), WiMAX (IEEE 802.16), Bluetooth" and other communication protocols. *Id.* at 4:63–5:1.

#### D. Illustrative Claim

Dependent claims 6–13 of the '982 patent are challenged, all of which depend indirectly from claim 1. Pet. 1, 21–85. Claims 2–5 and 14–

20 depend directly or indirectly from claim 1. All claims are directed to a "system." Claim 1 is reproduced below as illustrative.

- [1.P]<sup>3</sup> 1. A system comprising:
- [1.a] headphones comprising a pair of first and second wireless earphones to be worn simultaneously by a user,
- [1.b] wherein the first and second earphones are separate such that when the headphones are worn by the user, the first and second earphones are not physically connected,
- [1.c] wherein each of the first and second earphones comprises:
  - [1.c.i] a body portion that comprises:
    - [1.c.i.A] a wireless communication circuit for receiving and transmitting wireless signals;
    - [1.c.i.B] a processor circuit in communication with the wireless communication circuit; and
    - [1.c.i.C] an ear canal portion that is inserted into an ear of the user when worn by the user; and
    - [1.c.i.D] at least one acoustic transducer connected to the processor circuit; and
  - [1.c.ii] an elongated portion<sup>4</sup> that extends away from the body portion such that the elongated portion

<sup>&</sup>lt;sup>3</sup> For purposes of this Decision, we follow Petitioner's format where each claim is identified by claim number followed by a letter or combination of letters and Roman numerals for each limitation. *See* Pet. 32–53 (limitations [1.P]–[1.d]).

<sup>&</sup>lt;sup>4</sup> Other than the claims, "elongated portion" does not appear in the Specification.

extends downwardly when the ear canal portion is inserted in the ear of the user;

- [1.c.iii] a microphone connected to the processor circuit and for picking up utterances of a user of the headphones;
- [1.c.iv] an antenna connected to the wireless communication circuit; and
- [1.c.v] a rechargeable power source; and
- [1.d] a mobile, digital audio player that stores digital audio content and that comprises a wireless transceiver for transmitting digital audio content to the headphones via Bluetooth wireless communication links, such that each earphone receives and plays audio content received wirelessly via the Bluetooth wireless communication links from the mobile, digital audio player.

Ex. 1001, 18:8-40.

# E. Evidence of Record

This proceeding relies on the following prior art references and expert testimony:

Rosener, US 2008/0076489 A1, published Mar. 27, 2008 (Ex. 1004);

Hankey, US 2008/166001 A1, published July 10, 2008 (Ex. 1005);

Dyer, US 8,031,900 B2, issued Oct. 4, 2001 (Ex. 1006);

Hankey Provisional,<sup>5</sup> US 60/879,177, filed Jan. 6, 2007 (Ex. 1008);

<sup>&</sup>lt;sup>5</sup> Hankey Provisional is a US provisional application related to Hankey. *See* Ex. 1005 at code (60).

Price, US 2006/0026304 A1, published Feb. 2, 2006 (Ex. 1009); and

Haupt, EP 2006/042749 A2, issued Apr. 27, 2006 (Ex. 1020, including English translation).

Petitioner also relies on the Declaration of Dr. Jeremy Cooperstock ("Cooperstock Declaration," Ex. 1003).

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 6–13 would have been unpatentable on the following grounds (Pet. 1–2, 21–85):

Claim(s) Challenged	35 U.S.C. § <sup>6</sup>	Reference(s)/Basis
6, 8, 10 ,11	103	Rosener, Hankey, Haupt, Seshadri or Rosener, Hankey, Dyer, Haupt, Seshadri
7, 9, 12,13	103	Rosener, Hankey, Haupt, Seshadri, Price or Rosener, Hankey, Dyer, Haupt, Seshadri, Price

#### III. DISCRETIONARY DENIAL

Institution of *inter partes* review is discretionary. *See Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016) ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding."); 35 U.S.C. § 314(a).

and 103 apply.

<sup>&</sup>lt;sup>6</sup> The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103, effective March 16, 2013. Because the application that resulted in the '982 patent has an effective filing date before this date, the pre-AIA versions of §§ 102

Patent Owner alleges the advanced status of the District Court Lawsuit justifies discretionary denial. Prelim. Resp. 1–2. Both parties provided additional briefing on the *Fintiv* factors. *See* Prelim. Reply; Prelim. Sur-Reply. Petitioner also points out that Rosener was cited during prosecution, and addresses the issue thus raised under 35 U.S.C. § 325(d). Pet. 4–9. Both issues are addressed below.

### A. Discretion to Institute

The Board has discretion not to institute trial. *See* 35 U.S.C. §§ 314(a) and 324(a) (each authorizing institution of a trial under particular circumstances, but not requiring institution under any circumstances); 37 C.F.R. § 42.208(a) (stating "the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim."); *cf. Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016) ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."); *Harmonic Inc. v. Avid Tech, Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (explaining that under § 314(a), "the PTO is permitted, but never compelled, to institute a [*inter partes* review] proceeding").

Patent Owner argues that the Petition in this proceeding is a serial petition relative to the petition in the '381 IPR and should be denied because it "frustrate[s] the purpose of the [AIA] as providing quick and cost effective alternatives to litigation." Prelim. Resp. 3 (quoting *General Plastic Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 19 (PTAB Sept. 6, 2017) (precedential)).

The Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), *avail.* at tpgnov.pdf (uspto.gov) (the "CTPG"), provides

guidance as to when multiple petitions challenging the same patent might be appropriate. For example, the CTPG advises applying the non-exclusive *General Plastic* factors "especially as to 'follow-on' petitions challenging the same patent as challenged previously in an IPR." CTPG 56. This appears to be what Patent Owner refers to as "serial petitions challenging the same patent." Prelim. Resp. 23.

The CTPG also provides guidance on "Parallel Petitions Challenging the Same Patent," namely, "[t]wo or more petitions filed against the same patent at or about the same time (e.g., before the first preliminary response by the patent owner)." CTPG 59. Here, Petitioner contends, and the record confirms, that it filed the Petition before receiving the preliminary response or the Institution Decision in the '381 IPR. Pet. 11. The Petition was filed March 22, 2021, and the petition in the '381 IPR was filed January 4, 2021. The question here is why a single petition was not sufficient and why it was necessary to file a second six weeks later?

To that end, the CTPG states that "one petition should be sufficient to challenge the claims of a patent in most situations." CTPG 59. Thus, "multiple petitions by a petitioner are not necessary in the vast majority of cases." *Id.* "Two or more petitions filed against the same patent at or about the same time (e.g., before the first preliminary response by the patent owner) may place a substantial and unnecessary burden on the Board and the patent owner and could raise fairness, timing, and efficiency concerns." *Id.* (citing 35 U.S.C. § 316(b)). "Nonetheless, the Board recognizes that there may be circumstances in which more than one petition may be necessary, including, for example, when the patent owner has asserted a

large number of claims in litigation," although even then, granting two petitions "should be rare." *See id*.

If Petitioner "files two or more petitions," it is authorized to file a separate paper ranking the petitions and providing "a succinct explanation of the differences between the petitions, [and] why the issues addressed by the differences are material." CTPG 59–60. Petitioner filed such a Notice. Paper 3 (Petitioner's Notice Ranking Petitions and Explaining Material Differences Between Petitions Against U.S. Patent No. 10,206,025) ("Notice"). Petitioner includes similar arguments in the Petition. Pet. 10–11. The Notice ranks the '381 IPR petition first as Petitioner's preference for consideration by the Board. Notice 1–2.

As the Notice states, Petitioner filed two petitions challenging claims in the '982 patent. Notice 1–2. The first petition, the '381 IPR petition, challenges claims 1–5 and 14–20. '381 IPR, Paper 1, 1–2. The Petition challenges the remaining claims 6–13 "based upon the disclosure of Seshadri, in addition to the prior art relied upon in IPR2021-00381." Notice 2; *see also* Pet. 2–3, 30–31, 41–45, 69–71 (employing Seshadri (Ex. 1022)).

To justify filing two petitions challenging the '982 patent, Petitioner argues that "[t]his case presents a prototypical case where 'patent owner has asserted a large number of claims." and that Patent Owner "has taken no steps to narrow the dispute, and has instead asserted all 20 claims of the '982 patent against [Petitioner] in the co-pending litigation." Notice 2

<sup>&</sup>lt;sup>7</sup> The Petition also references Seshadri-818 (Ex. 1023) as part of the obviousness argument but not as part of a ground for unpatentability. Pet. 2, 71.

(quoting CTPG 59). Petitioner argues that Patent Owner's "unwillingness to narrow the claims asserted within the contentions leaves a quantum of claims—20—that . . . could not reasonably be addressed in a single petition in any event." Pet. 10 (citing Ex. 1014 (Preliminary Infringement Contentions in the District Court case)). Petitioner argues that it filed the '381 IPR petition "as quickly as possible" and "worked to furnish this petition as shortly thereafter." *Id*.

On its face, Petitioner's contention that 20 claims is a quantum of claims that could not be addressed in a single petition strains credibility. The Board routinely receives petitions challenging more than 18 claims. Indeed, the basic filing fee for an *inter partes* review contemplates challenging up to 20 claims. See 37 C.F.R. § 42.15(a)(2)–(3). Petitioner provides no explanation, in either the Notice or the Petition, as to why, despite the small number of claims in the '982 patent, this case is the rare case in which two petitions are necessary to challenge all of the patent's claims. Rather, Petitioner simply states that 20 is too many and that it has any burden is "clearly the direct result of [Patent Owner's] conduct in the co-pending litigation." Notice 2–3; Pet. 11. We see nothing unusual in the complexity of the '982 patent's claims or the technology of the challenged patent and prior art that would distinguish this case from the "vast majority of cases" in which one petition is sufficient. CTPG 59. We agree with Patent Owner that "[t]he First Petition . . . could have easily challenged claims 6–13 in view of Seshadri[] and Seshadri-818." Prelim. Resp. 24.

Rather than distinguish this case from the typical case, Petitioner's arguments actually reinforce that one petition should have been sufficient. Petitioner contends that the Petition addressed all claims <u>except</u> those

dependent claims that recite that "the headphones transition to play digital audio content received wirelessly from the second digital audio source via a second wireless communication link based on, at least in part, a signal strength for the second wireless communication link" (i.e., the "signal strength claims")." Notice 2. In our examination of the record, the Petition adds to the '381 IPR petition the analysis of claims 6 and 11, which depend respectively from claims 5 and 1, previously analyzed in the '381 IPR. '381 IPR, Paper 1, 32–53 (claim 1), 66 (claim 5). Seshadri is included in the showing made for claims 6 and 11. Id. at 69–75 (claim 6), 75 (claim 11). Claim 11 is similar to claim 6 and relies on the same showing. Claims 7 and 8 depend from claim 6, claim 9 depends from claim 8 and claim 9 depends from claim 10. Claim 12 depends from claim 11 and claim 13 from claim 12. Thus, Petitioner's argument is, essentially, that the Petition was necessary to address the "signal strength claim" limitation which specifically appears in claims 6 and 11. Notice 2; Pet. 10. As Petitioner states, "[g]iven the dependencies of the signal strength claims, . . . the primary difference between the first and second petitions is found in sections of the second petition that address the signal strength claims." Notice 3. Petitioner has offered no persuasive reason why this "concise addition to deal with the 8 signal strength claims" could not have been presented alongside the 11 claims challenged in the '381 IPR petition. *Id.* 

The Board already instituted trial based on the '381 IPR petition, which Petitioner ranked first in its Notice for consideration by the Board. See Notice 1; '381 IPR, Paper 15 ("'381 Inst. Dec"). As outlined above, the circumstances advanced by Petitioner here do not arise to a "rare" situation warranting two petitions. See CTPG 59. Conducting two trials under these

circumstances instead of one trial will "place a substantial and unnecessary burden on the Board and . . . [P]atent [O]wner and . . . raise fairness, timing, and efficiency concerns." *See id.* (citing 35 U.S.C. § 316(b)).

Based on the foregoing discussion, we exercise our discretion to deny institution based on the CTPG's guidance on parallel petitions.

Additionally, both parties address the applicability of the *General Plastic* factors to this case. Pet. 10–17; Prelim. Resp. 25–32. The analysis of these factors does not provide a persuasive reason to institute the followon or serial Petition (assuming we characterize the Petition as a serial, rather than a parallel petition given the six week gap between it and the '305 Petition).

As to "whether the same petitioner previously filed a petition directed to the same claims of the same patent" (*General Plastic* factor 1), Petitioner argues that this petition challenges the "unpatentability of dependent claims 6–13 (i.e., the 'signal strength claims'). Pet. 10. Patent Owner concedes that this factor favors Petitioner, "the other factors favor denying institution." Prelim. Resp. 25. However, claim 11 depends from claim 1, which was addressed in the '381 IPR petition. Indeed, all aspects of the claims challenged in the Petition save the signal strength limitation of claims 6 and 11 were addressed fully in the '381 IPR. Thus, this factor only marginally cuts against exercising our discretion to deny the Petition.

As to "whether at the time of filing of the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it" (*General Plastic* factor 2), Petitioner filed the '381 IPR Petition on January 4, 2021. Petitioner is silent on when it became aware of Seshadri and Seshadri-818, or whether it knew about those references before filing.

Nevertheless, Petitioner's stated reason for filing two petitions is that it could not challenge the large volume of asserted claims in one petition, not that it became aware of the prior art after filing the '381 IPR petition. The implication is that Petitioner was ready to challenge those claims (and aware of the basis to do so) but for limitations on briefing space. As further evidence of Petitioner's early knowledge of the prior art, Patent Owner argues that Petitioner was aware of Seshadri-818 and other references by the same inventor at least as early as January 2021, when Petitioner served invalidity contentions with those references in the District Court case. Prelim. Resp. 25 (citing Ex. 2023). Patent Owner further argues that Petitioner was aware of Seshadri at least as early as February 22, 2021, when it filed IPR2021-00546 advancing Seshadri as a reference. Id. at 26. Logically, Petitioner would have been aware of those references even earlier, as it would have spent significant time preparing its invalidity contentions and the Petition. In light of the evidence that Petitioner likely was aware of Seshadri before the filing of the Petition in March 2021, along with Petitioner's silence as to its knowledge, this factor weighs against institution.

As to "whether at the time of filing of the second petition the petitioner already received the patent owner's preliminary response to the first petition or received the Board's decision on whether to institute review in the first petition" (*General Plastic* factor 3), Petitioner states that it "has received neither [Patent Owner's] preliminary response, nor the Board's decision to institute in IPR2021-00381." Pet. 11. As noted above, the record supports this contention.

As to "the length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition" (*General Plastic* factor 4) and "whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent" (*General Plastic* factor 5), Petitioner argues that it "filed its first petition within four months of receiving [Patent Owner's] extensive contentions." Pet. 11. Petitioner contends that it "has judiciously worked to identify and frame for consideration the prior art offered to demonstrate unpatentability." *Id.* However, as noted above, the Petition merely added a "concise" analysis of the "signal strength" limitation of claims 6 and 11 otherwise repeating the analysis presented in the '381 IPR petition. Petitioner provides no persuasive reason why it waited an additional *four months* to file its second petition. These factors weigh in favor of exercising our discretion to deny the Petition.

As to "the finite resources of the Board" (*General Plastic* factor 6) and "the requirement under 35 U.S.C. § 316(a) (11) to issue a final determination not later than 1 year after the date on which the Director notices institution of review" (*General Plastic* factor 7), the Board has stated that "the Board's resources would be more fairly expended on initial petitions, rather than follow-on petitions." *General Plastic*, Paper 19 at 10. Petitioner offers to modify the schedules of the '381 IPR and this proceeding such that this proceeding is on essentially the same track as the '381 IPR. Pet. 11; Notice 3. Patent Owner responds that these proceedings could be consolidated, but that might jeopardize the Board meeting its one-year deadline for final written decisions. Prelim. Resp. 30. Although we

might be able to adjust schedules to minimize the waste of resources and added burden to the Board and Patent Owner, and to finish on time, Petitioner has not offered any credible justification for filing two petitions challenging the same patent or for its six week delay between those filings. These factors are, at best for Petitioner, neutral.

Upon weighing the *General Plastics* factors, we see no persuasive reason to allow Petitioner to proceed on two petitions challenging the same patent. Petitioner provides no credible explanation for why it was necessary to file two petitions challenging the '982 patent, given that the '982 patent only includes 20 claims. Nor did Petitioner explain persuasively why it was appropriate to wait just six weeks between petitions to concisely address a single claim limitation, especially when it was aware of Seshadri before the Petition was filed (and likely before the '381 IPR petition was filed). The Board's resources are better spent addressing the '381 IPR petition.

On this additional basis, we exercise our discretion to deny the Petition.

#### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review is *not instituted* with respect to all grounds of unpatentability raised in the Petition.

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